

REPORT OF INVESTIGATION AND FINDINGS

Allegations of Violation of the University of California Policy on Sexual Harassment November 2013

I. Allegations

It is alleged that Nori Castillo was in violation of the University of California Policy on Sexual Harassment in that he subjected [REDACTED] to unwelcome contact a sexual nature, over his objections.

II. Jurisdiction

The Title IX Compliance Officer has campus-wide responsibility for responding to sex discrimination complaints and implementation of the University Policy on Sexual Harassment and Complaint Resolution Procedures, which includes the investigation and resolution of complaints received from faculty, staff and students.

III. Applicable Policy

The University of California Policy on Sexual Harassment defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. In the interest of preventing sexual harassment, the University will respond to reports of any such conduct.

For Student on Student Harassment including Sexual Harassment the following definition is in effect by directive from UC Office of the President:

(Interim, effective October 9, 2009)

(see <http://www.ucop.edu/ucophome/coordrev/policy/pacaos10209.pdf>)

Sexual, racial, and other forms of harassment, defined as follows:

Harassment is defined as conduct that is so severe and/or pervasive, and objectively offensive, and that so substantially impairs a person's access to University programs or activities, that the person is effectively denied equal access to the University's resources and opportunities on the basis of his or her race, color, national or ethnic origin, alienage, sex, religion, age, sexual orientation, gender identity, marital status, veterans status, physical or mental disability, or perceived membership in any of these classifications.

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Student Employees: When employed by the University of California, and acting within the course and scope of that employment, students are subject to the University of California Policy on Sexual Harassment. Otherwise, Section 102.09, above, is the applicable standard for harassment by students.

For both student and/or employee sexual harassment, please refer to the UC Policy on Sexual Harassment and the Berkeley Campus Procedures for Reporting Sexual Harassment.

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, coaches, house staff, students, and non-student or non-employee participants in University programs, such as vendors, contractors, visitors, and patients. Sexual harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or opposite sex.

In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

IV. Summary Findings

Based upon the totality of the evidence gathered, the investigator finds that there that there has been a violation of the University of California Policy on Sexual Harassment. A detailed discussion of these findings is included in Sections VI and VII.

V. The Investigation

Interviews were conducted with [REDACTED] (The Complainant), Nori Castillo (The Respondent) [REDACTED] (Witness 1) and [REDACTED] (Witness 2). Additionally, the investigator reviewed email correspondence between the Complainant and Witness 1. Copies of texts purportedly sent between the Complainant and the Respondent were requested from both parties but neither complied.

A. The Complainant.

On July 2, 2013 the Complainant sent an email to [REDACTED] [REDACTED] alleging sexual harassment directed toward him by [REDACTED] the Respondent.

On July 13, 2013 the Complainant was interviewed in [REDACTED]. As the interview progressed, the Complainant began to express reservations about the investigation process and also professed to struggle emotionally with being taken step by step through his allegations. After about an hour the Complainant stated that he wanted to cut short the interview, offering to resume at a later date after he had had

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time to collect himself. Subsequent efforts to reschedule the interview with Complainant proved fruitless, with the Complainant either failing to appear at the appointed times, or contacting this investigator to reschedule. Consequently, our understanding of Complainant's account of the alleged conduct is limited to that which was gleaned from this brief, partial interview, as well as the accounts of the witnesses as to what the Complainant told them.

The Complainant is [REDACTED]

The Complainant was [REDACTED] when he struck up a friendship with the Respondent. The Complainant and Respondent [REDACTED] would engage in small talk during chance encounters. During one of these conversations, the Respondent asked the Complainant if [REDACTED] which the Complainant did.

[REDACTED] the Complainant [REDACTED] to the Respondent.

Beginning in March or April 2013, the Respondent began making comments about the Complainant's appearance. The Complainant offered examples of the types of comments being made.

- "You look hot"
- "I like that shirt"
- "You're my type"

The Complainant said that the comments were frequent, occurring several times a week. In response, and on several occasions, the Complainant said he asked the Respondent to stop making the remarks. In reply, the Respondent told the Complainant that he did not want to lose the Complainant's "trust" and that he would stop making the comments. However, after perhaps four or five days, and then throughout May, 2013 the comments resumed and increased in degree to the point where, on one occasion in the Respondent's office, the Respondent began to proposition the Complainant, telling him "I want you so badly", and, "You should give me one chance. I'll blow your mind."

Again the Complainant asked the Respondent to stop, telling him that he was "straight" and that a sexual relationship between the two of them was "never going to happen."

On another occasion, the Respondent described the Complainant as a "cock tease." The Complainant stated that the remarks caused him tremendous embarrassment and that he would become flushed and get a tingling sensation like pins and needles. The Complainant reiterated that he always tried to redirect the conversation and get the Respondent to stop. The Complainant believes that [REDACTED] would all be able to verify that the alleged verbal conduct occurred.

In spite of his concerns, [REDACTED]

When asked to provide more detail about those conversations and about the context in which he decided to [REDACTED] the Complainant expressed reservations about the interview process. At that time, the interviewers offered the Complainant the option to could take a break in the interview process and reschedule at a later date. The Complainant agreed to this offer. However, since that time, the Complainant has either declined to make an appointment or failed to keep scheduled appointments.

B. Interview with the Respondent

On August 27, 2013 the Respondent was interviewed at [REDACTED] UC Berkeley, California. The Respondent offered the following information:

The Respondent has been a full time employee at UC Berkeley since 2010. He was previously employed at Research Enterprise Services [REDACTED] he accepted a contract position at SkyDeck as the Assistant Director [REDACTED]

The Respondent denied sexually harassing the Complainant. The Respondent stated that he has never taken any sexual harassment training at UC Berkeley.¹

In November, 2011, with SkyDeck experiencing tremendous growth, and after a budget review, the Respondent and decided they could afford to [REDACTED] At about the same time, the Respondent became acquainted with the Complainant. The Complainant [REDACTED] and they would run into each other from time to time. The Respondent recalled striking up a conversation with the Complainant at a bus stop. The Complainant asked the Respondent what he did at UC Berkeley and the Respondent told the Complainant he should "come and check it out."

¹ UC Learning Management System records indicate that the Respondent completed the UC Ethical Values & Conduct program on 12/31/12. [REDACTED]

Subsequently the Respondent

The Respondent and the Complainant began socializing [REDACTED] They were often joined by [REDACTED] Socializing involved heavy drinking, mostly beer and whiskey. The Respondent recalled an early conversation with [REDACTED] in which she asked him, [REDACTED] The Respondent said that everybody made jokes and sexually explicit or casual references like "That's so gay..." The Respondent, who was living with a roommate, found nothing unsettling in these conversations.

One bar in particular that the Respondent and Complainant used to frequent was the "The White Horse" on Telegraph Avenue.² On one of these occasions, perhaps in March 2013, The Complainant told the Respondent [REDACTED] [REDACTED] After that, according to the Respondent, the Complainant's joking around became a lot more relaxed, he would mimic a flamboyant voice for example. [REDACTED]

The Respondent insisted that there were no sexual jokes [REDACTED], and that while there was a friendship between them, [REDACTED] The Respondent emphasized that [REDACTED]

The Complainant introduced the Respondent to W2.

The Respondent denied making the following comments to The Complainant

- "you look hot"
- "I like that shirt"
- "You're my type"

² The White Horse is known in the community as being a popular gay bar, though not exclusively so.

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On one occasion The Complainant "was getting dressed up for something" [REDACTED]

[REDACTED] he Complainant made a comment to the effect that he didn't feel great, to which the Respondent replied "you look great."

In late May or early June, 2013, The Complainant and [REDACTED] At about the same time, The Respondent's [REDACTED]

[REDACTED] The Respondent recalled talking with the Complainant about "our friendship." The Complainant told the Respondent, "I love you – it's too bad you're older or we'd make a perfect couple" then added something to the effect that it was "not going to happen."

On [REDACTED] 2013 [REDACTED] attended an event in San Francisco, where alcohol was served. On the taxi ride home, the Complainant and the Respondent sat beside each other. Both were drunk. [REDACTED]

[REDACTED] While recounting this story, the Respondent noted that both he and the Complainant were drunk and that his memory was fragmented. [REDACTED]

[REDACTED] although they had had general conversations about sex, but not with each other. The Respondent recalled the Complainant showing him explicit pictures of heterosexual sex acts, then offering to text the Respondent explicit photos of himself. On June 18, 2013 the Respondent texted explicit images of himself to the Complainant.

On Friday [REDACTED] 2013 SkyDeck had its "Friday drinks at the office" social. Typically on Fridays, SkyDeck provided beer, wine and appetizers at office for its clients. Afterwards, a number of the employees and their friends went to the Shattuck Plaza Hotel where they continued drinking, and then on to The White Horse bar for more. The

Respondent said that he was extremely drunk when he and the Complainant [REDACTED]
The Respondent remembered them talking. [REDACTED]

[REDACTED]

[REDACTED]

The Respondent said he could not recall if he ever told the Complainant "I'll blow your mind."

The Respondent said that [REDACTED] he never asked the Complainant to have sex with him. The Respondent said that he never told the Complainant that the Complainant was a "cock tease."

C. Interview with Witness 1

On August 16, 2013 W1 was interviewed in person [REDACTED] W1 is the [REDACTED]

[REDACTED]

[REDACTED]

The Executive Director and Deputy Director are SkyDeck's only permanent staff. W1 described that, in his capacity as Deputy Director, the Respondent has overall responsibility for SkyDeck operations. [REDACTED] The Respondent was a [REDACTED] rehire into the position .

Originally it was the program's intention to recruit staff support through the Haas School of Business. However, the recruitment process was poor and beginning in January 2013 and SkyDeck took charge of the recruitment process. In consultation with [REDACTED] the Respondent decided to recruit [REDACTED] to handle administrative support, logistics

³ Human Capital Management personnel records indicate that the Respondent was hired into a contract position, rather than a career position [REDACTED]

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and orientation for the different teams. This task was handled primarily by the Respondent. [REDACTED] W1 had no knowledge of the recruitment process handled by the Respondent. As far as W1 was aware, there was no real process, no job standards and no minimum qualification for the position other than that the candidate needed to be [REDACTED]

By July, 2013, there were [REDACTED] all male and with one exception all friends of the Complainant.

The Complainant, the Respondent and [REDACTED] all had ongoing personal relationships with one another [REDACTED] and socialized with each other frequently. W1 said that the Complainant had recently moved into the Respondent's home [REDACTED]

On July 2, 2013 W1 was returning from a trip abroad when he received an email dated July 1, 2013 from the Complainant. The email described sexual harassment directed toward the Complainant over a period of several months [REDACTED]

W1 immediately responded to the Complainant stating that he would begin the process of addressing the allegations. W1 then contacted [REDACTED] at the VCRO's office seeking guidance. [REDACTED] drafted a letter placing the Respondent on investigatory leave with immediate effect. [REDACTED]

A few days later W1 spoke with the Complainant about the incident. The Complainant offered the following account.

The Complainant and the Respondent went out drinking. [REDACTED]

In addition to placing the Respondent on investigatory leave, [REDACTED] counseled the Complainant on available services, including [REDACTED] as well as mental health services and the Office for the Prevention of Harassment and Discrimination. The Complainant told W1 he had spoken with an attorney and he had [REDACTED] W2. W1 then accompanied the Complainant to the Respondent's [REDACTED]

D. Interview with Witness 2

W2 is [REDACTED] He is a friend of the Complainant and [REDACTED]
[REDACTED]

W2 started [REDACTED] in May, 2013. W2 found the atmosphere [REDACTED] to be very informal. He noted that the relationship between the Complainant and the Respondent was overly friendly. They always seemed to be joking with each other and their relationship appeared at times to be "flirtatious." "They were touchy, bro'ey" W2 said. W2 did not recall hearing any remarks pass between the Complainant and the Respondent that might be sexualized in nature.

At the end of June 2013, W2 was out [REDACTED] when the Complainant called him at home and told him he was being sexually harassed by the Respondent. The Complainant did not go into detail, but commented he had received several unwelcome texts and phone calls, [REDACTED]
[REDACTED] The Complainant told W2 he would be filing a complaint with the University. When W2 returned [REDACTED] he was told by W1 that the Respondent was on administrative leave.

W2 reiterated that [REDACTED] and prior to the Complainant's telephone call, he was unaware of any issues [REDACTED] which made the Complainant uncomfortable. W2 assumed that the Respondent was attracted to the Complainant, but the Respondent never did anything [REDACTED] that made W2 uncomfortable. W2 acknowledged that the Complainant got [REDACTED], and that the Respondent relied on the Complainant to [REDACTED] He did feel that there was a sexual undertone to the Complainant and Respondent's relationship [REDACTED]
[REDACTED]

VI. Issues Emerging from the Information Gathered

Unwelcomeness and Consent

The statements of W1 and W2 suggest a pattern of conduct [REDACTED] which was overly familiar but that was not recognizably hostile. The characterization of the relationship between the Complainant and Respondent as "flirtatious" would seem to suggest that attention from the Respondent to the Complainant [REDACTED] was not unwelcome. [REDACTED]

However,

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as the Complainant noted in his original complaint to W1, at the time, he was [REDACTED]
[REDACTED]

Unfortunately, the Complainant's lack of participation in the process subsequent to the initial interview makes it difficult to assess his state of mind or his conduct. For example, what are we to make of the fact that the Complainant and Respondent would drink heavily together all the time?

However, the evidence from the Respondent directly, and indirectly from W1 regarding the Complainant's account of [REDACTED]
[REDACTED]

Conflict of Interest

When the Complainant [REDACTED] [REDACTED]
[REDACTED] This in fact would appear to be a violation of the University's conflict of interest policy, in that the Respondent had a direct financial interest in [REDACTED] and if there were a consensual romantic [REDACTED] relationship between the two of them, would implicate the conflict of interest provisions of the Sexual Harassment Policy.

Consistency and Credibility

The lack of participation in the process from both the Complainant and the Respondent make this a difficult matter about which to make findings. Neither the Complainant nor the Respondent seemed particularly credible. That the two of them were friends, [REDACTED] drank heavily together is undisputed. [REDACTED]
[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The Respondent [REDACTED] socializes and drinks them with them a lot, [REDACTED] expresses his sexual feelings verbally on more than one occasion, sends sexual images to the person, engages in sexual contact, discusses creating a [REDACTED]

The Complainant on the other hand, [REDACTED], perhaps took advantage of [REDACTED] generosity and the attraction, and partied hard with [REDACTED]

VII. Conclusion

Based on information gathered from interviews with witnesses, the Complainant and the Respondent, as well as the review of relevant documents, the investigator evaluated the record of the allegations as a whole and gave consideration to the totality of the circumstances, including the context in which the alleged incidents occurred.

The standard by which the evidence was weighed was "is it more likely than not that the alleged conduct occurred and if yes, was that conduct a violation of the policy." The question of mitigation does not enter into this analysis.

The evidence gathered supports the conclusion that the Respondent more likely than not subjected the complainant to unwelcome attention of a sexualized nature. For the University's part, much of this conduct occurred [REDACTED]

[REDACTED] To the extent this was the case, the University worked promptly to address the matter by placing the Respondent on investigatory leave.

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The Respondent admitted there was [REDACTED] and this alone is sufficient to support a finding that the relationship violated the conflict of interest provisions of the Sexual Harassment Policy.

It is therefore determined that the University of California Policy on Sexual Harassment has been violated.